

APPEAL NO. 010539

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 12, 2001. With regard to the issue before her, the hearing officer determined that the appellant (claimant herein) was not entitled to supplemental income benefits for the second compensable quarter. The determination was based upon a finding by the hearing officer that the claimant had an ability to work during the qualifying period for the second quarter. The claimant appeals, contending that the hearing officer erred in finding he had an ability to work during the qualifying period and in not making separate findings concerning each "prong" of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The respondent (carrier herein) contends that there is sufficient evidence to support the hearing officer's finding that the claimant had an ability to work during the qualifying period and that the hearing officer was not required to make findings in the present case concerning the three "prongs" of Rule 130.102(d)(4), citing Texas Workers' Compensation Commission Appeal No. 000228, decided March 20, 2000 (although from the extensive quotation from the decision in the carrier's response, it is obvious that the carrier intended to cite Texas Workers' Compensation Commission Appeal No. 000227, decided March 21, 2000).

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

In the present case, it was undisputed that the claimant did not seek employment during the qualifying period for the second compensable quarter. The claimant argued that he met the requirement of Section 408.142(a)(4) that he attempt in good faith to obtain employment commensurate with his ability to work because he was unable to work during the qualifying period, meeting the test of Rule 130.102(d)(4).

The question of whether or not a claimant has no ability to work is a factual determination of the hearing officer, which is subject to reversal on appeal only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995; Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Applying this standard, we find no grounds for reversal as there was conflicting evidence in the record concerning the claimant's ability to work.

Having affirmed the hearing officer's finding that the claimant had an ability to work, we find no reason to remand this case for further findings as this finding is sufficient to support the hearing officer's finding that the claimant failed to seek employment commensurate with his ability to work in light of the fact that it was undisputed that the claimant did not seek employment during the filing period.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCURRING OPINION:

I concur in the result reached by the majority. I write separately to stress that the Appeals Panel has held that all three prongs of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) must be satisfied. See, e.g., Texas Workers' Compensation Commission Appeal No. 992197, decided November 18, 1999; Texas Workers' Compensation Commission Appeal No. 992413, decided December 13, 1999 (Unpublished); and Texas Workers' Compensation Commission Appeal No. 992717, decided January 20, 2000. The Appeals Panel has, since the advent of the "new" supplemental income benefits rules, also encouraged hearing officers to make specific findings of fact addressing each of the three elements of Rule 130.102(d)(4) when that rule is applicable. See, e.g., Texas Workers' Compensation Commission Appeal No. 991973, decided October 25, 1999.

Philip F. O'Neill
Appeals Judge